U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

[redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: SRC 00 054 51615 Office: Texas Service Center Date: FEB 29 2000

IN RE: Petitioner: [redacted]
Beneficiary

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(ii)(b)

IN BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

The petitioner provides temporary staffing for the rooms and food and beverage divisions of different hotel properties. It seeks to employ the beneficiaries as housekeepers for 9 months. The certifying officer of the Department of Labor declined to issue a labor certification because the petitioner has a permanent need for these workers. The director determined that the petitioner had not established that the need for the services to be performed is temporary.

Counsel states that the petitioner has shown that there is a need for the beneficiaries to come temporarily to the United States to perform work in the hotel industry because there are not sufficient workers available. Counsel also states that the temporary need is for a one-time occurrence, or possibly, an intermittent need.

Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(ii), defines an H-2B temporary worker as:

> an alien...having a residence in a foreign country which he has no intention of abandoning, who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession....

Matter of Artee Corp., 18 I&N Dec. 366 (Comm. 1982), as codified in current regulations at 8 C.F.R. 214.2(h)(6)(ii), specified that the test for determining whether an alien is coming "temporarily" to the United States to "perform temporary services or labor" is whether the need of the petitioner for the duties to be performed is temporary. It is the nature of the need, not the nature of the duties, that is controlling. See 55 Fed. Reg. 2616 (1990).

As a general rule, the period of the petitioner's need must be a year or less, although there may be extraordinary circumstances where the temporary services or labor might last longer than one year. The petitioner's need for the services or labor must be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need. 8 C.F.R. 214.2(h)(6)(ii)(B).

Counsel states that the petitioner's need may be classified as either a one-time occurrence, or an intermittent need. The petition indicates that the employment is a one-time occurrence and that the temporary need is unpredictable.

The regulation at 8 C.F.R. 214.2(h)(6)(ii)((B)(1) states that for the nature of the petitioner's need to be a one-time occurrence, the petitioner must establish that it will not need workers to perform the services or labor in the future.

The regulation at 8 C.F.R. 214.2(h)(6)(ii)(B)(4) states that for the nature of the petitioner's need to be an intermittent need the petitioner must establish that it has not employed permanent or full-time workers to perform the services or labor, but occasionally or intermittently needs temporary workers to perform services or labor for short periods.

The nontechnical description of the job on the Application for Alien Employment Certification (Form ETA 750) reads "cleans rooms and halls, ... move and arrange furniture, turn mattresses, makes beds, replenishes linens, dusts and/or polishes furniture, blinds, and fixtures, vacuums, replenishes supplies, such as drinking glasses and writing supplies, sorts, counts, folds, marks or carries linens, may deliver mini-refrigerators, baby cribs, and rollaway beds to guests rooms, performs minor personal services for guests." These duties are ongoing and cannot be classified as duties that will not need to be performed in the future.

Counsel explains that the petitioner hires its own employees and assigns them to a client to supplement the client's workforce. Therefore, the petitioner has a permanent need for workers. The petitioner is required to demonstrate that its intention is to employ the specific beneficiaries for only a temporary period. Here, the petitioner has not established that it needs to employ the beneficiaries as a one-time occurrence, or intermittently, and for only a temporary period. The petitioner's need for the services of the beneficiaries is permanent; the facility that needs the beneficiaries' services temporarily will not be the beneficiaries' employer.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The decision of the director is affirmed. The visa petition is denied.